

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1803 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STANISH K CHAUHAN, PROP.DIR. OF METHODIST CHURCH...

Versus

MUNICIPAL CORPN. OF VADODARA AND ANR.

Appearance:

MS HEMALI for MR MC BHATT for Petitioner
MR NN PANDYA for Respondent No. 2
None present for respondent No.12

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/07/96

ORAL JUDGMENT

The petitioner, a Methodist church in southern Asia, filed this Special Civil Application before this Court and made a grievance that the demand of education cess from the petitioner for the property which is used as boys hostel situated at Vadodara, is highly illegal and arbitrary.

2. A reply to this writ petition has been filed but a copy of the same is not available on record. A carbon

copy thereof has been taken on record with consent of parties. Shri N.N. Pandya, counsel for the respondent No.2 fairly conceded that u/s.13 of the Gujarat Education Cess Act, powers are vested with State Government to exempt any land or building of religious and charitable public trust from levying of education cess. He has further admitted that the land and building of charitable public trusts have been exempted from levying of education cess, but subsequently a decision has been taken by the Government to take out the land and buildings of charitable public trusts where admission is only given to a particular community. Shri Pandya has come up with the case that in the boys hostel of petitioner-trust at Baroda, admission is only restricted to a particular community and as such that building goes out of the exemption provided by the State Government to such institutions.

3. There is no material produced on record to show and establish that the admission to the boys hostel run by the petitioner-trust at Baroda is restricted to a particular community only. The counsel for the respondent No.2, Shri Pandya, by reading some portion from the reply, contended that admissions are restricted to a particular community. I have gone through the contents of reply and the deponent has only stated that to the best of his knowledge, admission to the boys hostel at Baroda, run by the petitioner-trust, is restricted to a particular community. Such a statement cannot be accepted. An order is passed to levy education cess on the petitioner on the ground that the said institution does not fall in the exemption clause. But in such case, it was obligatory on the part of the respondents to first give notice and an opportunity of hearing to the petitioner to establish that the said institution does not go out of the exemption clause. Only after giving this opportunity and on the satisfaction by the authority that the admission to the boys hostel of petitioner-trust at Vadodara is restricted to a particular community, said order could have been passed for demand of education cess and not otherwise. This course is not followed in this case.

4. The counsel for the petitioner has raised another objection that the demand of education cess could have been perspective and/or retrospective as the Circular of the Government dated 1.2.93 is not retrospective, but I do not consider it to be appropriate to go on this question in this Special Civil Application.

5. Interim relief has also been granted by this

Court and to that extent, the petitioner is protected. In the result, this Special Civil Application is allowed and the order annexure 'C' dated 21st January 1984 of the Corporation is set aside. It is however made clear that setting aside of this order will not come in the way of the Corporation to pass appropriate orders after giving notice and opportunity of hearing to the petitioner. The Special Civil Application is allowed and Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)